



Costs Decision

Hearing held on 14 January 2025

Site visits made on 15 and 30 January 2025

by Stephen Normington BSc, DipTP, MRICS, MRTPI, FIHE, FIQ

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Costs application in relation to Appeal Ref: APP/Y3425/W/24/3351763

Lower Farm, Drointon, Stafford ST18 0LX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Novus Renewable Services Limited for a full award of costs against Stafford Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for installation and operation of solar farm and energy storage system with associated landscaping, underground cabling, works, equipment and infrastructure.
-

Decision

1. The application for a full award of costs is refused.

Preliminary matters

2. The planning application and appeal form were submitted by Novus Renewable Services Limited. The application for an award of costs was submitted by Innova Renewables Developments Limited. The Appellant confirmed that Innova Renewables Developments Limited is now the new company name for Novus Renewables Services Limited but in essence both companies are the same entity. However, in order to be consistent with the planning application form, appeal form and my appeal decision, I have used Novus Renewables Services Limited in the banner heading above.

The submissions for Novus Renewable Services Limited

3. The costs application was submitted in writing prior to the opening of the Hearing. No further additional points were made orally at the Hearing.
4. The Appellant contends that the Council chose to go against the advice of its own Officers without any contradicting supporting evidence to justify the decision taken against such advice. It is considered that the single reason for the refusal of planning permission is muddled, contrived and fails to fully consider the planning merits of the case and importantly the Development Plan policies when taken as a whole. The Council's Statement of Case and Landscape Statement of Case are also both confusing and contradictory.
5. It is also considered that the Council sought in its Appeal Statement to intentionally omit key aspects of its Officers' advice. The Appellant considers that this is reflective of the Council's assessment of this application as a whole which failed to

- consider the Development Plan as the starting point, choosing rather to cherry pick extracts of policy and consultee responses to refuse this application.
6. The Appellant provides an example of the above approach by citing Paragraph 20 of the Council's Appeal Statement which concludes that 'There is no follow up response by Design Midlands and issues raised by Design Midlands remain.' The Appellant contends that there was no follow up response is because the Council themselves did not seek it from Design Midlands (the Council's consultant) but relied on the Council's Design Officer's review.
 7. In particular, the Appellant considers that the Council chose to omit the summary from their own design expert who concluded in the referenced response dated February 2024 that: "...significant improvements to the design of the scheme have been achieved, and which to a large extent do successfully mitigate many of the concerns expressed previously to the applicant. Therefore, (and also considering the broad support for such schemes within National and Local Planning Policy which was highlighted in the previous Design Consultation in May 2023) it is considered on balance that the latest revised scheme would not be so damaging and detrimental to the experiential and qualitative aspects of the landscape to warrant strong objection on design grounds."
 8. It is contended that the failure to consider the full response of this consultee, who expressly considers and summarises the impacts on experiential and qualitative aspects of the landscape, resulted in the Council's case comprising inaccurate assertions and a vague reason for refusal.
 9. Central to the Council's failure to fully assess the application against the Development Plan is its complete disregard to its own Policy N3 for which the starting point is the support for renewable energy development unless the consequences of doing so conflict with facets a-d of the policy.
 10. Policy N3 does not appear in the Council's Statement of Case, was not discussed by Members at the Planning Committee meeting and does not form part of the reason for refusal. The Appellant considers that this demonstrates that the Council erred in its consideration of the relevant planning policies and the subsequent planning balance. If the application is not in conflict with Policy N3, which the Appeal Statement and Decision Notice suggest it is not, then it should have been approved without delay.
 11. The Appellant contends that the Council has sought to defend this point in the Statement of Common Ground (SoCG) by inferring conflict with Policy N3 in Paragraph 2.6.4, which plainly should have formed the starting point for assessing the application. The SoCG identifies the support that Policy N3 gives to renewable energy schemes is provided subject to a number of other considerations being addressed. These include, for example, harm to the landscape (at N3 bullet point (a)) and identifies that the Council would not agree that there is no conflict.
 12. Policy N3 refers to landscape but it does not say that there cannot be any harm, moreover it refers specifically to surrounding landscape character, which the Council has already set out is not a matter of disagreement (SoCG Para 2.2.2 in regards to Policy N8 Landscape Character). Furthermore, the Appellant considers that the Council's Statement of Case confirms at Para 6.5 "the planning authority case relates specifically to matters concerning the visual impact of the scheme,

- rather than landscape impact.” The Appellant considers that If there is no conflict with Policy N3, then the application is supported by the Development Plan.
13. The Appellant also considers that the consideration of the planning balance, set out in the Council’s Statement of Case, fails to include vital benefits which should be attributed significant positive weight, namely the contribution to addressing climate change and meeting net zero targets, energy security, and the substantial biodiversity net gain of 79%. The Appellant contends that the Council’s case seeks to apply an inversely tilted balance in which it is asserted that the benefits must be given the lesser weight and that the greater weight needs to be given to the identified harm. Deliberately skewing a negative weighting to seek to justify the Council’s contrived refusal reason is a fundamental flaw and is not consistent with planning policy.
 14. The Appellant considers that none of these points were considered at the Planning Committee Meeting. As such, had the Council correctly balanced both the benefits and harms, it is clear that the planning merits of the case would have been fully considered and that the application would not have been refused. Consequently, unnecessary development costs and delay would have been avoided.
 15. Finally, the Appellant contends that the Council accepted that the submitted landscape documents and viewpoints were acceptable at the time the application was determined by Planning Committee and cites paragraph 4.31 of the Officer’s Report which identifies that the viewpoints chosen within the Landscape and Visual Impact Assessment (LVIA) are considered to form a fair representation of the location and extent of views of the site. Despite Committee Members not walking a single footpath (a core element of the Council’s case is impact on users of the Public Rights of Way) and not visiting public vantage points during their site visit, in the Appeal Statement and Landscape Appeal Statement the Council now put forward multiple (twenty two) additional viewpoints which it identifies as being necessary to be considered. The Appellant considers that these additional viewpoints could have been dealt with during the application stage.
 16. The Appellant concludes that the Council failed in its duty to consider the Development Plan as a whole, failed to undertake a robust planning balance exercise, and chose to retrospectively cherry pick policies. Furthermore, it is considered that the Council’s response to the application for an award of costs, dated 8 January 2025, does not change the position. The Appellant reaffirms that, had the Council’s Planning Committee considered at any point its own Local Plan Policy N3 as a starting point, alongside the National Planning Policy Framework (the Framework) and National Policy Statements and other identified benefits, then the application may not have been refused.

The response by Stafford Borough Council

17. The Council’s response was made in writing prior to the opening of the hearing. No further additional points were made orally at the Hearing.
18. The Council contends that the reason for refusal and the case in defending the appeal relates to the impact of the proposed development on the appearance of the rural landscape and upon the visual amenities of the local community. No other matters beyond those detailed in the refusal reason are disputed in defending this appeal.

19. It is clearly set out both in the decision notice reason for refusal and in the Council's appeal case, with reference to paragraphs 135 and 180 of the December 2023 Framework and Policy N1 in the Plan for Stafford Borough 2011 – 2031 (the Local Plan), that the impact of the proposed development on the appearance of the rural landscape and upon the visual amenities of the local community are the policy areas in dispute.
20. The Council considers that the Statement of Case refers only to the proposals conflicting with the policies cited in the decision notice i.e. to paragraphs 135 and 180 of the Framework as dated December 2023 and to Policy N1 of the Local Plan and that there are no additional policies which the appeal proposals are identified as being in conflict with. As such there is absolutely no basis to suggest there has been unreasonable behaviour in the form of "later written evidence, introducing new policy aspects" that could have "directly caused another party to incur unnecessary or wasted expense in the appeal process"
21. The Council contends that the response to the application by Design Midlands, dated August 2023, provides a technical review by a suitably qualified landscape professional of the submitted LVIA and an assessment of the landscape and visual effects of the proposals. It identifies specific landscape and visual concerns in respect of the application which would only partly be addressed by the later amendments made to the proposals.
22. In defending the appeal, as the Council has no in-house landscape officer, the Council has therefore sought the advice of a qualified landscape consultant who has provided a detailed appeal statement on landscape and visual issues. This considers the potential impact of the proposals in terms of the character of the area and the effect on receptors. This forms part of the Council's case.
23. It is considered that significant evidence supporting the Council's position has been provided. As such, the Appellant's contention that there has been a "failure to produce evidence to substantiate the reason for refusal and promote vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis" is therefore contested. There is no basis to suggest there has been unreasonable behaviour in this regard that could have "directly caused another party to incur unnecessary or wasted expense in the appeal process".
24. The planning application was considered by the Council's Planning Committee on 31 July 2024. Members reviewed the case for the proposals and the material planning considerations applying. Members of the Planning Committee are not bound to follow officer recommendations. During the Committee discussion, Members identified concerns in respect of the landscape and visual impacts of the proposed development. Issues were raised in the meeting in relation to the nature of the countryside setting, the position directly adjacent to the village, the scale of the development and the visual appearance of the solar panels.
25. Whilst Planning Practice Guidance (paragraph 033 Reference ID: 16-033-20140306) does state that "behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded", having assessed all the material considerations, the Planning Committee Members were entitled to refuse the application. Therefore, there is no basis to conclude there has been unreasonable behaviour in this regard

- that could have “directly caused another party to incur unnecessary or wasted expense in the appeal process”.
26. The Appellant suggests that the Council has sought in its Appeal Statement to intentionally omit key aspects of its expert’s advice and failed to consider the Development Plan as the starting point, choosing rather to cherry pick extracts of policy and consultee responses. The Council cites Section 38(6) of the Planning and Compulsory Purchase Act 2004 which states: “for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”. The Development Plan is therefore the starting point for the determination of planning applications.
27. The Council contend that planning law does not, however, define the scope of material considerations but they are to be found primarily (but not exclusively) in the national planning policy, development plan policies and court decisions. The Planning Practice Guidance (PPG) acknowledges that the scope of what can constitute a material consideration is very wide (Paragraph: 008 Reference ID: 21b-008-20140306) and case law establishes that “in principle...any consideration which relates to the use and development of land is capable of being a planning consideration” (further to *Stringer v MHLG* 1971).
28. The Officer’s Report sets out a series of material planning considerations in respect of the determination of the application and the Council’s Statement of Case (paragraph 6.3) clearly states “The Council’s position on all other relevant matters, such as the principle of development impact on heritage assets, highways access, and ecology for example, are set out in the Officer’s Report to committee and are not repeated here”. The Officer’s Report provides details of the site and surroundings; the proposal; the consultee responses an assessment against national and local planning policy; assessment of a series of detailed matters including the impact on the surroundings; impact on heritage assets; highways matters; ecology, and flood risk.
29. Whilst Officers recommended approval, when balancing the material planning issues, the committee members were ultimately entitled to reach an alternative conclusion and they did so having reviewed the proposals and the material planning considerations applying. In defending the appeal, the Council’s case necessarily focusses on the matters in dispute. As such, the Council reject the suggestion that it has sought to ignore key aspects of its experts’ advice or failed to consider the Development Plan as the starting point.
30. The Council agrees that, in order to determine whether the proposals should be supported, an assessment of the planning balance should be made. The decision to refuse permission and to defend the appeal flows from such an exercise to assess both the benefits and the harm that would arise from the proposed development and consideration of the weight that should attach to each.
31. The Council highlight paragraph: 007 reference ID: 5-007-20140306 of the PPG under the heading “What are the particular planning considerations that relate to large scale ground-mounted solar photovoltaic farms?”. This states “it is important to be clear that: the need for renewable or low carbon energy does not automatically override environmental protections”.

32. The appellant's concerns centre around a suggestion that the Council has failed in the overall requirement to undertake a robust assessment of the development proposals as that would lead inevitably to a decision to support it. The Council's position follows an assessment of the material planning considerations and an exercise to balance harms against benefits. While the Appellant may disagree with the outcome of the Council's assessment, it is evident that there are harms associated with the proposed development and the Council's position in this regard is supported by evidence that forms part of the appeal documents. The Appellant has therefore not demonstrated that there was unreasonable behaviour that has resulted in unnecessary or wasted expense.

Reasons

33. The PPG advises that all parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal.
34. Local planning authorities are at risk of an award of costs if they behave unreasonably with relation to preventing or delaying development which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and any other material considerations or making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
35. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
36. To some extent, the consideration of the visual impact of the proposal is a subjective judgement. In this case, members of the Planning Committee made a site visit and, although the evidence suggests that not all of the viewpoints were visited, they were able to obtain a degree of appreciation of the visual effect of the proposed development. In this regard, members were entitled to make their own assessment of the impact of the scheme on the character and appearance of the area. In exercising their planning judgement, members concluded that such impact would be of an extent that would cause conflict with relevant policy in the Local Plan.
37. The Officer Report clearly identified that Policy N3 was a relevant consideration. Whilst I accept that this policy was not specifically identified in the Conclusion and Planning Balance section of the Report, the benefits of the scheme were identified. Furthermore, whilst the Council's Statement of Case may not refer to Policy N3, it does state in paragraph 6.3 that no other matters beyond those detailed in the reason for refusal are disputed in defending the appeal. Paragraph 6.4 further states that the Council's case relates specifically to matters concerning the visual impact of the scheme, rather than its landscape impact.
38. In setting out the reasons for the refusal of planning permission, there is no need for the Council to identify the policies of the Local Plan that the development may comply with. In this case, the concerns of the Council related solely to the adverse

- impact of the proposed development on the character of the rural area and the visual amenities of the local community when viewed from public vantage points.
39. Having viewed the site, it was not unreasonable for the members of Planning Committee to come to a judgement that the visual effect of the proposal outweighed the benefits. In doing so, their concerns were specifically limited to visual impact. In my view, the Planning Committee was entitled to make such judgement based on the subjective consideration of the visual effects of the proposal. As such, I do not consider that the Council made vague, generalised or inaccurate assertions about the proposal's impact.
40. The reason for the refusal of planning permission was relevant to the application and clearly states the policy (N1) of the Local Plan that the proposed development would be in conflict with. The evidence provided in this appeal and expressed in the Hearing demonstrates that members were aware of the benefits of solar energy development but considered that these would not outweigh the adverse impact on the character and appearance and visual amenity of the area. Consequently, conflict with the provisions of Policy N1 of the Local Plan was identified.
41. Accordingly, I do not find that the Council failed to properly evaluate the application or failed to properly consider the merits of the scheme. The reason for the refusal of planning permission was adequately stated by reference to the appropriate policy contained in the Local Plan that the proposal was in conflict with. I have found that the Council had reasonable concerns about the harm to the character and appearance of the local area which justified its decision. As such, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal could not have been avoided.
42. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not warranted.

Stephen Normington

INSPECTOR